

**Declaration of Alon Leibovich in Support of BrandTotal's
Motion for a Preliminary Injunction**

I, Alon Leibovich, state and declare under penalty of perjury as follows:

1. I am the CEO and co-founder of Defendant-Counterclaim Plaintiff BrandTotal Ltd. Defendant-Counterclaim Plaintiff Unimania, Inc., is a wholly-owned subsidiary of BrandTotal that designs apps that work in connection with BrandTotal's business. Collectively, I refer to both entities herein as "BrandTotal."

2. I submit this declaration in support of BrandTotal's Motion for a Preliminary Injunction. I am over the age of eighteen and I have personal knowledge of the facts set forth below. If called as a witness, I could and would testify competently to these facts and statements.

3. BrandTotal seeks preliminary relief due to the expected actions of Facebook, Inc. ("Facebook") which, unless enjoined from interfering with the operation of BrandTotal's UpVoice program, will result in the demise of BrandTotal's business before trial in this action.

4. As described in my Declaration and Supplemental Declaration in support of BrandTotal's Motion for Temporary Restraining Order (ECF Nos. 26-8 & 49-7), Facebook's actions in September and October 2020, which resulted in BrandTotal's UpVoice extension ("UpVoice Legacy") being removed from the Google Chrome Web Store and substantial loss of data, including Facebook data, substantially disrupted BrandTotal's access to information, and caused substantial irreparable harm to BrandTotal. If Facebook repeats these same actions regarding BrandTotal's new UpVoice program ("UpVoice 2021"), BrandTotal will continue to be irreparably harmed.

BrandTotal Is Burning Through Its Cash Reserves and Cannot Attract New Investments Because of Facebook's Actions Related to UpVoice Legacy

5. As a startup, BrandTotal has a limited reserve of cash, and it is spending far more per month than it is taking in. Indeed, BrandTotal's typical net "burn rate" (i.e., the amount BrandTotal is spending of its venture capital to finance expenses) is usually on average approximately [REDACTED] per month, depending on the amount of customer payments or collections in each month.

6. BrandTotal's cash balance as of January 31, 2021, was [REDACTED]. In view of BrandTotal's usual burn rate, that cash balance will be depleted well before any trial in this matter, which would force BrandTotal to shut down operations if BrandTotal's data stream, including its Facebook data stream, is again compromised.

7. Further, BrandTotal has projected that its usual burn rate will likely *increase* if preliminary relief is not granted and BrandTotal's data stream is again compromised (depending on the number of layoffs required), causing operations to be shut down even sooner. This is because the burn rate will be affected by the lack of payment from customers severing their relationship with BrandTotal because of the lack of Facebook data, as discussed in more detail below. The less payments BrandTotal receives, the more the burn rate will increase, eviscerating BrandTotal's cash reserves at an even more rapid rate.

8. Further, in my previous declarations, I described how Facebook's actions would affect BrandTotal's ability to attain new investments, which is the lifeblood for any startup as the foundation for cash reserves. *See* ECF No. 26-8 at ¶¶ 52–56.

9. Since then, while BrandTotal's data stream was compromised, at least one potential investor, [REDACTED]

[REDACTED]

[REDACTED] Ex. A at BT0001704.

10. This lack of ability to get funding is particularly damaging for BrandTotal and its UpVoice project because a start-up usually only has an 18 to 24-month funding runway to raise the funds needed reach the next growth stage of the business. In BrandTotal's case, the company began a startup "runway" period [REDACTED] and has roughly 18-24 months to show exceptional growth, as per typical industry practice for startup companies, or it will not succeed in raising another funding round. During this period, a startup is usually required to show two to three times its initial revenues in order to obtain the next funding round at a valuation that will keep the company in a normal startup trajectory. Considering that raising funds takes about six months to complete, BrandTotal needs to start raising money in [REDACTED] [REDACTED] at the latest, with strong indications of great business traction in order to sustain its growth rate and its return to its investors. This process has been irreparably impeded by the lawsuit, as BrandTotal is not able to go on a sufficient growth track.

11. With no ability to obtain new cash infusions, and at the rate we are spending money, without injunctive relieve to stop Facebook from interfering with BrandTotal's data stream, BrandTotal will not make it to a trial in this action, which I understand will be around June 2022.

12. Importantly, if relief is not granted and Facebook' again interferes with BrandTotal's data stream, BrandTotal will likely liquidate well before April 2022, much less June 2022. This is because a startup company does not continue burn cash until it does not have any assets. Rational investors look to recoup at least some of their investment well before a startup's bottom line goes to zero. [REDACTED]

[REDACTED]

BrandTotal Has Lost Employees Due to Facebook's Actions Related to UpVoice Legacy

13. In my previous declarations, I forecasted that BrandTotal would be forced to layoff employees unless BrandTotal was able to resume operations. *See* ECF No. 26-8 ¶ 56. Since then, BrandTotal has lost 10 employees because of Facebook's actions, either due to layoffs or the employee leaving due to company instability due to lack of Facebook data.

BrandTotal Has Lost, and Continues to Lose, Customers and Prospective Customers

14. In my previous declarations, I also described how Facebook's actions drove away existing and potential customers, including customers like [REDACTED]
[REDACTED] *See* ECF No. 26-8 ¶¶ 34–35; ECF No. 49-7 ¶ 6; *see also* Ex. B at BT0001633 ([REDACTED]).

15. In addition to the customers mentioned in my previous declarations, many other customers and prospective customers have ended or paused their relationship with BrandTotal because Facebook's actions related to UpVoice Legacy made BrandTotal's performance of its contracts more burdensome, forcing it to sell incomplete analytics products without Facebook data and Google Chrome user data.

16. Since my TRO declarations, and despite BrandTotal's best efforts to mitigate the effect of the loss of Facebook data, BrandTotal has continued to lose customers and prospective customers because of Facebook's actions.

17. For example, On October 27, 2020, [REDACTED]
[REDACTED]
[REDACTED]

Ex. C at BT0001630.

18. In early January, [REDACTED] decided not to move forward with a business relationship with BrandTotal both because of the Facebook lawsuit, along with some minor budget issues. Indeed, [REDACTED]

██████████ which prevents them from purchasing from BrandTotal until the lawsuit is resolved. Ex. D at BT0001710.

19. On January 10, 2021, [REDACTED] informed BrandTotal that it will be freezing its account until the Facebook-related data issues are resolved. Ex. E at BT0001607.

20. On February 4, 2021, BrandTotal put [REDACTED]
[REDACTED] Ex. F at BT0001663.

21. On February 10, 2021, another potential customer, [REDACTED] voiced its concerns to proceed as a BrandTotal customer [REDACTED]
[REDACTED] Ex. G at BT0001668.

22. On February 12, 2021, [REDACTED] informed BrandTotal that it would be freezing its account until the Facebook data issues are resolved. Ex. H at BT0001714.

23. This is not to say that we have lost every customer. Since October 2020, six companies—[REDACTED]
[REDACTED]—have renewed their contracts with BrandTotal.

24. However, BrandTotal has gained only *one* new customer—[REDACTED]. But because of the lack of Facebook data, we decided to delay the start of this business arrangement from [REDACTED]

BrandTotal Has Begun to [REDACTED] Because of the Loss of Facebook Data and Will Continue [REDACTED] If Data is Lost Again

25. As another example of how Facebook's actions have made performance of BrandTotal's contracts more burdensome, BrandTotal has recently alerted customers that the current [REDACTED]

See, e.g., Ex. I at BT0001658. As a result, BrandTotal explained that “metrics would have an incomplete view of competitive

measurements.” *Id.* Therefore, BrandTotal has [REDACTED]

[REDACTED] *Id.* Indeed, to date, BrandTotal has committed to issuing approximately [REDACTED] in service credits due to Facebook’s actions, and

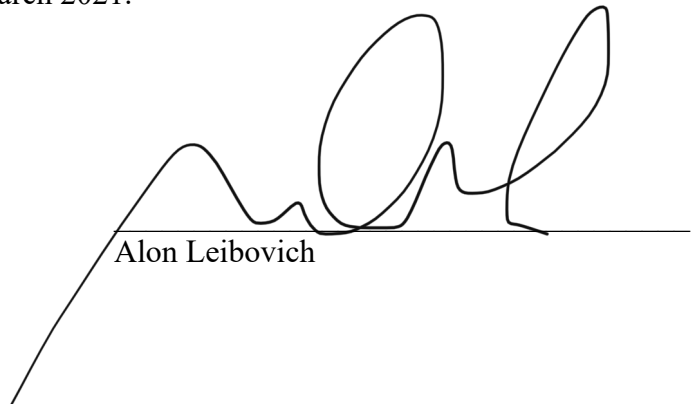
[REDACTED].

26. If Facebook interferes with BrandTotal’s UpVoice 2021, BrandTotal will be forced to [REDACTED] due to the continued loss of data.

* * *

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed this 12th day of March 2021.



Alon Leibovich